

MARLBORO COUNTY PLANNING COMMISSION

"CALLED" MEETING & PUBLIC HEARING*

MARLBORO COUNTY COURTHOUSE COURTROOM

TUESDAY, SEPTEMBER 1, 2009

6:00 PM

"Exhibit A"

Kenneth Rosser, Chairman

PLANNING COMMISSION:

ROBERT JOHNSON,
E. L. JOHNAKIN,
EMMA N. BETHEA,
MELVIN CARABO, AND

KENNETH ROSSER,
DOUGLAS O'TUEL,
RONALD BROWN
JOHNNY SELLERS

CALL TO ORDER

Mr. Kenneth Rosser, Chairman introduced the members of the Planning Commission to the Public: Mr. Robert Johnson, Mr. Kenneth Rosser, Mr. E. L. Johnakin, Mr. Douglas O'Tuel, Ms. Emma Bethea, Mr. Ronald Brown, Mr. Melvin Carabo, and Mr. Johnny Sellers (A majority of the Planning Commission in attendance).

PRESENTATION OF PROCESS

Mr. Steve Weber, Legal Counsel for Marlboro County, described the process for the rezoning request public hearing to both the Marlboro County Planning Commission and Marlboro County Council. Mr. Weber indicated that the meeting was being recorded and asked all speakers to speak clearly and slowly.

PUBLIC HEARING ON REZONING REQUEST (JOINT COUNTY COUNCIL/PLANNING COMMISSION)

Consideration of a proposed Marlboro County Zoning Map amendment from General Development (GD) to Rural Resource (RR) for the property with the tax map numbers 03-01-02-04, 30-01-02-07, 03-01-02-038, 03-01-02-039, 03-01-02-040 and 03-01-02-058. The existing use of the property is agricultural. The proposed use of the property is a sanitary landfill.

Motion made by Mr. Robert Johnson, seconded by Mr. E. L. Johnakin to open the Public Hearing on the rezoning request. Vote in favor. Unanimous. Motion carried.

*The Planning Commission meeting was recorded and a transcription is available for inspection at the County Clerk's office.

a. **Staff Presentation**

Mr. Bob Eskridge – summarized the rezoning request and identified a potential conflict of interest and his decision not to participate in the rezoning process.

Mr. Steve Weber – as legal counsel, explained the rezoning process, the factors the Planning Commission was to consider when evaluating the request, and the Planning Commission's obligation under the Zoning Ordinance to make a recommendation to County Council to approve or deny the request based on the evidence in the record.

b. **Public Comment**

Ms. Jessie King – spoke in support of the rezoning request. Ms. King stated that she represented Z.V. Pate, and that she had submitted written materials to the Commission prior to the hearing. Ms. King stated that the rezoning request was an appropriate use which was consistent with surrounding land use and the Comprehensive Plan. She stated that the proposed use would have no impact on transportation. She also stated that a large tract of land was at issue, and that the plan for the proposed landfill was to provide an even larger buffer than required by law.

Ms. Lucy Parson – shared concerns about Council coercion and illegal meetings. Ms. Parson cited radio announcements regarding the Council's decision and stated that the \$50 million that would be received for the landfill would be spent by the County's schools in one year. Ms. Parson also expressed concern that clean air and water in the County could not be replaced once the landfill is constructed.

Mr. Tom Wood – shared concerns about the landfill. Mr. Wood likened landfill companies to "BS artists," and then stated his belief that the landfill would bring respiratory problems to the citizens of the County and would cause property values and tax revenues to decrease. He stated that the landfill would not strengthen the County's economy, pointing to Lee County as an example, and also stated that landfills frequently leak, pointing to Richland County as an example.

Mr. Lyon Bell – shared concerns about the landfill. Mr. Bell stated that he is a resident of Richmond County, N.C. and shared his belief that a landfill in Marlboro County would harm him, as well as his dogs, who would not be able to drink from the nearby streams, and his grandchildren, who would not be healthy. He also stated that Z.V. Pate is a large landowner in several counties, and expressed his belief that Z.V. Pate does not care about protecting the community. He also pointed out the frequent leakage of landfills and the frequent contamination of well water resulting from that leakage.

Mr. Floyd English – shared concerns about the landfill. Mr. English stated that he had talked with DHEC officials, who had told him that denying the rezoning request would slow down the landfill process. He questioned the amount of money for which the County could be bought, and expressed his lack of faith in DHEC to protect the environment. He also noted that the County would have no idea what materials were put into its landfill, and cited the Bishopville Landfill as an example.

Ms. Faye Quick – expressed concerns about the landfill. Ms. Quick stated that she lives 3-5 miles from the landfill and does not want the area to be rezoned. She stated that her great-great- and great-grandfather were doctors who used herbal medicines grown in the soils of the County. She also stated that she had compiled a list of 20 people in the County who have died of cancer within a 5-6 mile radius of each other, and also cited the high number of premature babies born in the County. She concluded that there are already problems in the water and air of the County, and that a landfill would only worsen those problems.

Mr. Fred Nickoless – shared concerns about the financial implications of the landfill on the County. He stated his belief that, if the County were to receive \$50 million from MRR for the landfill, the State would likely decrease its funding to the County because of the State's own budgetary problems.

Ms. Ara Adams – expressed concerns about the landfill. Ms. Adams stated that she resides in Hopkins, S.C., approximately 20 miles from the Screaming Eagle Landfill. She cited that landfill's leakage problems and the fact that citizens living in the area of that landfill were instructed to drink from city water because their drinking water wells were no longer safe. She also stated that business owners already encounter obstacles with taxes, etc. when looking to locate business in the County, and that the presence of a landfill will make that problem worse. She stated that although times are tough, money should not outweigh the health of the County's citizens. She urged the Commission to listen to the 94% of citizens who opposed the landfill in the referendum. Finally, she stated that the landfill would only bring 10 jobs to the County and expressed her belief that this increase would not help the County prosper.

Ms. Nance Kave – expressed concerns about the landfill's consistency with the County's Comprehensive Plan. Ms. Kave stated that she was a resident of Georgetown and served as the North Coast Director of the South Carolina Coastal Conservation League. She stated her belief that the rezoning request was inconsistent with the Comprehensive Plan because the current permitted capacity for waste far exceeds local needs and because a landfill would negatively impact human health and the environment. She stated that 11 creeks bisect the landfill, which then flow to the Pee Dee River, and advised that a landfill similar to Lee County's would bring unsightliness and an odor to passersby. She stated that landfill leaching and resulting degradation are problems that cannot be stopped once they begin. She also cited truck traffic, odors, garbage and air pollution as problems with the landfill.

Mr. Belvin Swett – expressed concerns about the landfill. Mr. Swett stated that he is Chairman of the Citizens for Marlboro County group, and cited a newspaper article from a December 2007 Marlboro Herald and a May 21, 2008 letter to Council from MRR. He stated that he disagreed with MRR's characterization of the landfill as "environmentally safe," and also stated his belief that MRR had lost its good name in the County.

Mr. Jason Steen—expressed concerns about the landfill. Mr. Steen stated that he is the facilities director at Camp Pee Dee, and questioned whether the landfill would cause children and adults not to come to the Camp and forego the positive impact it would have on their lives. He also stated that a recycling effort would be a good alternative to bringing a landfill to the County.

Ms. Shaun Monson – expressed concerns about the landfill. Ms. Monson stated that she already has a medical condition, and that the landfill would make her even more sick. She also stated that she cared about the environment in the County.

Dr. Fred McQueen – expressed concerns about the landfill. Dr. McQueen stated that he is a resident of Richmond County, N.C., and that he served in the past on the Environmental Justice Commission. He stated that if the landfill is built in the County, artesian water wells may be tainted and land may be ruined such that it can never be farmed again. He also stated that the military planes which commonly fly in the County's skies may be harmed by the birds that would populate the landfill. He also expressed his concern about environmental justice, and questioned why landfills are put in poor communities rather than affluent ones. Finally, he stated that many Bennettsville residents work across the state line at a distribution center and industrial park which have the potential for growth, but this potential would be stalled by the construction of the landfill.

Mr. Leotis Quick – expressed concerns about the landfill. Mr. Quick stated that he lives approximately 2 miles from the northern end of the landfill. He stated that he believes his property will be devalued and that his children will not be able to play outside because of the smell or drink water from their wells if the landfill is constructed.

Ms. Tullei Christian – expressed concerns about the landfill. Ms. Christian stated that she lives in Wallace and that her property appeared on the map used by Ms. King in her presentation. She questioned Ms. King's statement that the proposed landfill site is not an urban area, stating that just because the area is not urban does not mean the area needs a landfill.

Mrs. Alexander Bright – expressed concerns about the landfill. Ms. Bright stated that she lives 3 miles from the site of the proposed landfill, and that the County cannot put a value on a person's life. Ms. Bright stated her belief that her property value would decrease from the presence of the landfill and that only the landowner would profit from its construction. She stated her belief that the landowner had stolen enough from the people of the County. She also stated that the proposed landfill will have no buffer for air or water, and that once garbage enters the air and water, her property would be worthless.

Mr. Weber spoke regarding the procedures for the Planning Commission's deliberations and voting on the rezoning request. Mr. Weber explained that, once the public hearing was closed, the Planning Commission would deliberate and vote on the request. Mr. Weber further explained that Chairman Rosser would then provide the Planning Commission's recommendation to Council and, after the Planning Commission continued its meeting to September 3 and adjourned its members, Council would have 10 additional minutes of public hearing. The Planning Commission then determined that it would hear additional public comment before closing its public hearing.

c. **Additional Public Comment**

Mr. Mike King – expressed concerns about the landfill. Mr. King stated that he lives along the Pee Dee River downstream of the County. He stated that 7 water courses flow across the

proposed landfill site, and that the landfill will leak into those water courses and eventually into the Pee Dee River. Mr. King also cited a federal ruling, which Mr. King stated held that once a landfill begins to receive waste from out of state, the landfill cannot stop that stream because it would interfere with interstate commerce. Mr. King expressed concern that waste from New York and New Jersey will be sent to the landfill and will never be stopped.

Ms. Polly McAlpine – questioned the Commission and Council as to why they want to ruin their home by bringing the landfill to the County.

Mr. Lenier Papum – expressed concerns about the landfill. Mr. Papum stated that the Commission and Council should not put a price on the citizens' lives, and that if the landfill comes, it will affect the grandchildren of the County's current citizens. Mr. Papum then cited statistics about landfill leakage, stating that the average landfill leaks about 0.2 gallons per day, and that as little as one gallon of oil can contaminate 100 million gallons of water.

Ms. Marty Rankin – expressed concerns about the landfill. Ms. Rankin stated that she is a farmer, and that she believes the landfill would be disastrous to the County's way of life. She stated that after \$2 million is spent, the County will be back at square one and the aquifer will not function as intended. She stated her opposition to a mountain of trash from unknown locations and instead expressed her desire to be a good steward of the environment.

Ms. Peggy Brown – expressed concerns about the landfill. Ms. Brown stated that she is the Director of Natural Resources for the League of Women Voters. She stated that she resides in Florence, S.C. and that her city gets its water from the Pee Dee River. She cited the County's May 2008 solid waste ordinance and stated that there is no need for the landfill, that the landfill receiving outside wastes is not in the best interests of the County, and that constructing the landfill in the County would be an abomination to the County.

Mr. Brett Barnes – expressed concerns about the money spent on the landfill debate. Mr. Barnes questioned the Council about why it has spent \$200,000 on attorneys' fees when it could have updated its Solid Waste Management Plan for \$6,000.

Dr. Tony Battista – expressed concerns about the landfill. Dr. Battista stated that the unemployment rate is 27% in the County, and that talented young people are leaving the County because of its lack of opportunity. Dr. Battista stated that, if a 30-story high landfill is built, young people from the County certainly will not want to return there to live.

Ms. Elizabeth Weenes – expressed concerns about the landfill. Ms. Weenes expressed concern that leakage from the landfill would migrate to Horry County, where she resides. Ms. Weenes stated that 7 streams run through the property on which the landfill is proposed to be sited, which flow to the Pee Dee River and to Horry County. Ms. Weenes also stated that the EPA has admitted that even the best landfill liners can leak leachate, and expressed concern that human feces from dirty diapers in the landfill would migrate to Horry County.

Mr. John Nickoless – Mr. Nickoless cited the 3,000 signatures submitted to Council opposing the landfill. He urged Council not to vote for poison that causes cancer, and also

stated that he had received a letter from President Barack Obama stating that he plans to forward Mr. Nickoless' concerns to the EPA.

Mr. Anthony Millan – expressed concerns about the landfill. Mr. Millan suggested that, instead of bringing a landfill to the County, MRR should devote its resources to revamping the landfill into a “green” waste facility. Mr. Millan also stated his belief that this “green” waste would bring prosperity to the County. Mr. Millan also implored the Commission not to kill the children and make the adults sick by bringing the landfill to the County.

Mr. Dean Moore – expressed concerns about the landfill. Mr. Moore questioned Mr. Weber about the acreage of the landfill, and also raised concerns about the presence of diseases such as AIDS and HIV in the County's prisons. He also stated that DHEC permits landfill companies to police themselves, and stated his belief that this practice was wrong. Finally, Mr. Moore stated his belief that no other industry or economic development would come to the County if the landfill is built there.

Ms. Minnie Holmes – expressed concerns about the landfill. Ms. Holmes stated that she resides in the northern part of the County, and that she has been struggling with Z.V. Pate for many years. She stated that Z.V. Pate owns the property all around her property, and that she does not want the megadump to come to the County.

Ms. Edith Watson – expressed concerns about the landfill. Ms. Watson stated that other Counties would bring their waste to the County if the landfill was constructed there and that financial incentives should not control the County's determination. She cited several Bible verses to support her statements.

Mr. Ollie Bridges – expressed concerns about the landfill. Ms. Bridges stated that she came to the County from a state with a large, contaminated megadump. She stated her belief that having such a megadump is not worthwhile for the County.

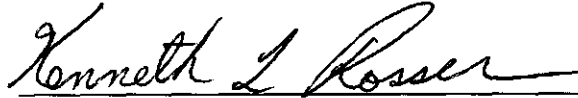
Ms. Emma Huckabee – expressed concerns about the landfill. Ms. Huckabee stated that she lives in the area where the landfill is proposed to be located, and that it is known as the Old Fruit Farm area. Ms. Huckabee stated that, if the landfill is constructed there, it will no longer be known by that name. She questioned the Commission and Council as to their consideration of the people who live in the area of the proposed landfill.

Ms. April Herring – expressed concerns about the landfill. Ms. Herring stated her belief that, by permitting the landfill to be constructed in the County, the County was smearing its appearance. She stated that the presence of two prisons was already a negative for the County's appearance, and that adding a landfill would cause the County to lose residents and jobs.

Motion made by Melvin Carabo, seconded by Mr. Robert Johnson, to close the Public Hearing on the rezoning request. Vote in favor. Unanimous. Motion carried.

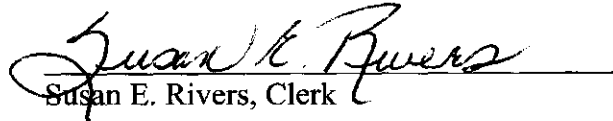
Motion made by Mr. Melvin Carabo, seconded by Mr. Douglas O'Tuel to continue the meeting to September 3 to approve the minutes of the meeting and the written report. Vote in favor. Unanimous. Motion carried.

(SEAL)



Kenneth Rosser, Chairman
Marlboro County Planning Commission

ATTEST:



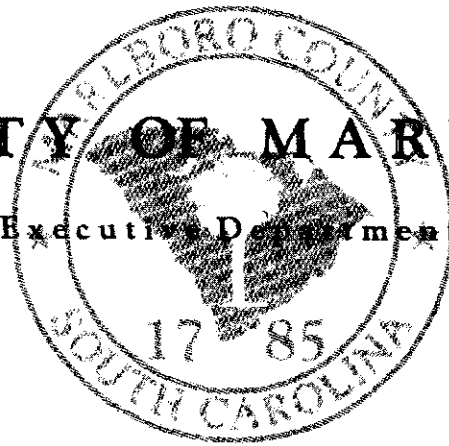
Susan E. Rivers, Clerk

Date Adopted: September 3, 2009

COUNTY OF MARLBORO

Executive Department

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TO: Chairman Dr. Carolyn Prince and the Marlboro County Council
FROM: Chairman Kenneth Rosser, Marlboro County Planning Commission
DATE: September 3, 2009 *Kenneth L Rosser*
RE: Recommendation by Planning Commission to Deny Zoning Map Amendment Request

Recommendation by Planning Commission to Deny Zoning Map Amendment Request

Background

The Marlboro County Zoning Ordinance (Ordinance 545, 2002) provides for a County zoning map that divides Marlboro County into zoning districts. Article X of the Zoning Ordinance allows for amendments to the zoning map upon review and recommendation of the Planning Commission and approval of County Council. On August 7, 2009, a representative of Z.V. Pate, Inc. submitted a request to the County for an amendment to the County zoning map (the "request").

While the Zoning Ordinance does not require the Planning Commission to conduct a public hearing on a zoning map amendment request, the Planning Commission nonetheless held a public hearing on the request to receive comments and information from the public and additional evidence on which it could base its recommendation to County Council.

The Planning Commission received and reviewed the request, considered public comment and information provided at the September 1, 2009 public hearing and voted to recommend denial of the request. This report memorializes the Planning Commission's findings, recommendation and report made to County Council on September 1, 2009 and incorporates by reference the minutes from the Planning Commission meeting at which that recommendation and report was made, which are attached hereto as Exhibit A. In addition, the September 1, 2009

public hearing was recorded and a transcript is available for review and inspection at the County Clerk's office.

Standard

Under Section 10-5 of the Marlboro County Zoning Ordinance, the Planning Commission is required to consider the following factors in determining whether a zoning map amendment is appropriate:

1. The relationship of the request to surrounding land uses and the County's Comprehensive Plan,
2. Whether the uses permitted by the proposed change would be appropriate, and
3. Other circumstances and conditions affecting the property, surrounding land and the County at large.

The Planning Commission considered each of these factors in evaluating the evidence in the record and making its recommendation and report to Council.

Findings of Fact

On August 7, 2009, a representative of Z.V. Pate, Inc. (the landowner) submitted a request to the County for an amendment to the County zoning map. The request sought a zoning map amendment for the following specific properties: Tax Map. Nos. 03-01-02-04, 03-01-02-07, 03-01-02-038, a portion of 03-01-02-039, a portion of 03-01-02-040 and 03-01-02-058. The landowner requested that these parcels be rezoned from their current zoning designation of GD (General Development District) to RR (Rural Resource District). The request indicated that the existing use of the property was for agricultural purposes. The request also indicated that the proposed use after rezoning was for a sanitary landfill. Sanitary landfills are prohibited under these parcels' current GD zoning district. Sanitary landfills are permitted under the proposed RR zoning district if a supplemental land development permit is first obtained for that use pursuant to Article V of the Zoning Ordinance.

The landowner provided supplemental information regarding its request on August 27, August 28 and September 1, 2009, including a clarification that it was requesting rezoning for all of parcels 03-01-02-039, 03-01-02-040 and 03-01-02-058 rather than portions of those parcels.

The County Council and the Planning Commission held a joint public hearing on the rezoning request on September 1, 2009 at 6:00 p.m. at the Marlboro County Courthouse. County staff first summarized the rezoning request and identified a potential conflict of interest and his decision not to participate in the rezoning process. Legal counsel for Marlboro County then explained the rezoning process, the factors the Planning Commission was to consider when evaluating the request, and the Planning Commission's obligation under the Zoning Ordinance to make a recommendation to County Council to approve or deny the request based on the evidence in the record.

The Planning Commission then received public comment. Thirty-one individuals from North Carolina and South Carolina spoke during the approximately 45-minute comment period, including the applicant, the public and County staff. A representative of the applicant spoke first, followed by interested members of the general public and final comments from a representative of County staff. Based on the level of interest expressed regarding the topic and the number of citizens who had signed up to speak, the Planning Commission decided to receive additional comment, evidence and information beyond the initial allotted comment period.

The citizens who provided comments, evidence and information at the hearing expressed concerns regarding numerous issues, and provided information to the Planning Commission, including:

- the landfill's impact on the environment and the health of the citizens of Marlboro County, including EPA statistics that all landfills leak and that very small amounts of contaminants that can result in very large areas of groundwater contamination (18 citizens);
- the inconsistency of the proposed use of the subject parcels as a sanitary landfill with the County's Comprehensive Plan, including the fact that the County produces only a small amount of waste that can be handled by the Lee County Landfill for 20 years. In addition, population of the County is decreasing, as is the volume of waste in the County (3 citizens);
- the lack of need for a landfill based on current waste production and capacity (4 citizens);
- concern that the use of the parcels as a landfill would not be in the best interests of the County and would degrade its appearance, including potential detriment to the local economy and recreational opportunities if a landfill is constructed on the subject parcels (13 citizens);
- leakage problems with landfills and the inability to control what goes into them, as well as downstream contamination risks, potential impacts on the seven-stream watershed from Marlboro County to Georgetown, South Carolina, truck traffic, odors, garbage, and increased air pollution (9 citizens);
- environmental justice issues, specifically that the landfill is proposed to be sited in a historically poor community (2 citizens);
- concerns about out-of-state waste and a potential landfill's implications for citizens in neighboring counties (5 citizens);
- potential "green" alternatives to a landfill (2 citizens);
- money spent on attorney's fees (1 citizen);
- the landfill's negative impact on at least three wilderness camps in the Wallace area that are unique to South Carolina (1 citizen);
- the inappropriateness of the proposed use to the surrounding rural, agricultural land (6 citizens);
- the negative impact of a landfill on the County at large by ruining economic development and ruining aesthetics with potentially one of the largest landfills in the United States (7 citizens); and

- Landfill height concerns and concerns over birds creating airline hazards for nearby airlines and military installations (4 citizens).

In addition, six citizens whose properties were located near the subject parcels expressed opposition to the landfill and concerns regarding the potential depreciation of their property value and potential health concerns if a landfill were to be constructed on the subject parcels.

Additional details regarding the public comments received at the hearing can be found in the minutes attached as Exhibit A and the transcript of the hearing available for inspection at the County Clerk's office.

At the conclusion of the public comment period, the Planning Commission closed the public hearing. The Planning Commission then openly deliberated on the request, and based on the need to receive legal advice related to the pending litigation involving Marlboro County, went into executive session for approximately 10 minutes. Following the executive session, the Planning Commission reopened its deliberations. During these deliberations, Planning Commission members inquired about several topics, including the following:

- A Commissioner reviewed the uses permitted under the Zoning Ordinance's RR zoning designation and inquired as to whether the Planning Commission had the power to partially approve a request for a zoning map amendment, such that the request would be approved for certain uses and denied for others. Legal counsel responded that the Planning Commission may only vote to recommend approval or denial of a rezoning request for all permitted uses within the zoning district, and that partial approvals were not allowed.
- In response to citizen comments, a Commissioner asked a question regarding whether the Planning Board is required by law to consider rezoning requests. Legal counsel responded by confirming that, under the County Zoning Ordinance, the Planning Commission is required to consider the three factors listed in Section 10-5 of the Zoning Ordinance and make a recommendation to County Council regarding whether the request should be approved or denied based on the evidence in the record.
- A Commissioner asked whether, assuming that the rezoning request is approved, the applicant's rights could subsequently be reversed or modified. Legal counsel responded that it would be difficult for the Planning Commission to reverse its recommendation in that situation after Council acted, and even then only if a different landowner approached the Planning Commission to seek a zoning map amendment.
- Finally, a Commissioner inquired as to whether Federal or State law provided for financial compensation to landowners for the loss of use of their land if a landfill is constructed on the subject parcels as a result of the approval of the rezoning request. Legal counsel responded that State and Federal law generally would not provide compensation to private landowners in this situation.

At the end of the Planning Commission's deliberations, a Commissioner stated for the record that his vote would be based on a number of reasons, including the inappropriate proposed

use of the properties and the insufficiency of evidence in the record to satisfy the three factors in the Zoning Ordinance.

Recommendation

The Planning Commission evaluated the evidence in the record as it related to the three factors set forth in Section 10-5 of the Ordinance and concluded that there was insufficient evidence to satisfy the three factors in Section 10-5. Further, the Planning Commission concluded that there was substantial contrary evidence in the record to support a denial of the rezoning request based on the three factors.

Based on the information received from the applicant on August 7, 27, 28 and September 1, 2009 and the evidence received at the public hearing, the Planning Commission voted to recommend the denial of Z.V. Pate's request for a zoning map amendment. This recommendation to deny the request was made by a majority vote of the Planning Commission (by unanimous vote) in open session on roll call. After the vote, the Chairman reported to County Council the Planning Commission's recommendation and this report memorializes the Commission's report to County Council on September 1, 2009.

Attachment – Exhibit A, September 1, 2009 Planning Commission Meeting Minutes